

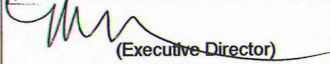


**REPORT TO THE
REDEVELOPMENT AGENCY**

AGENDA ITEM NO.

AGENCY MEETING: 8/28/07

APPROVED BY


(Executive Director)

DATE: August 28, 2007

FROM: MARLENE MURPHEY, Executive Director

SUBJECT: Approve and authorize the Executive Director to execute a Purchase and Sale Agreement for the purchase of 3702 E. Ventura Street known as Assessor Parcel Number 470-052-01 owned by Cuberto and Imelda Hernandez, within the Southeast Fresno Revitalization Redevelopment Project Area.

RECOMMENDATIONS

It is recommended that the Agency Board authorize the Executive Director to enter into a Purchase and Sale Agreement purchase of 3702 E. Ventura Street known as Assessor Parcel Number 470-052-01 owned by Cuberto and Imelda Hernandez, within the Southeast Fresno Revitalization Redevelopment Project Area

EXECUTIVE SUMMARY

The Agency is seeking approval to make a willing-seller acquisition of a 0.29-acre improved parcel located on the southeast corner of Ventura and Seventh Streets within the Southeast Fresno Revitalization Redevelopment Project Area. The purpose of acquisition is for blight removal along the King Canyon / Ventura corridor and the possibility that the site could be included as part of a larger mixed-use residential / commercial project in cooperation with the City of Fresno's recent purchase of the adjoining former Fresno Unified School District's former maintenance site.

Through negotiations with the property owners, the Agency secured a Purchase and Sales Agreement for the property and thus the Agency is seeking the Board's approval of the agreement and the acquisition of this property at this time.

BACKGROUND

The Agency has been working with the City of Fresno's Housing and Community Development Division (the "City") regarding the potential redevelopment of the northern portion of the block bound by Ventura, Seventh, and Eight Streets. This includes a 0.29-acre parcel owned by Cuberto and Imelda Hernandez and the adjoining 2.85-acre parcel owned by Fresno Unified School District (FUSD). The Agency's role is to acquire the 0.29-acre parcel, assist in

relocating the businesses, and demolition and clearance of the building once the ("City") completes its acquisition of the (FUSD) site. The properties could then be assembled to potentially accommodate a residential / commercial mixed-use development consisting of both market rate and affordable housing. A developer would be selected through a competitive "Request for Proposal/Qualifications" process.

In November 2004, (FUSD) declared their 2.85 acre parcel as surplus and the ("City") made an offer to purchase the site. The Fresno Unified School District Board approved the sale of the land to the ("City") on March 14, 2007. On April 11, 2007, the Housing and Community Development Commission reviewed and recommended approval of the ("City's") proposal to purchase the 2.85 acre parcel from FUSD, and on June 26, 2007, the City Council reviewed and approved the same, and they adopted the CEQA Mitigated Negative Declaration for the Project. The ("City") closed escrow on the (FUSD) property on August 17, 2007.

The Agency retained and received an appraisal for the 0.29-acre parcel, dated February 13, 2007, by A. George Zengel, MAI, indicating the "Fair Market Value" of the real property at \$340,000 and an additional \$90,000 for the entire "Going Concern Value" of the business (Las Palomas) owned by the Seller. The "Going Concern Value" reflects the real estate, furniture, fixtures and equipment (FF&E), and the value of the Los Palomas restaurant / bar. The seller wants to retain certain FF&E items (see Exhibit C of purchase agreement), thus the Agency retained and received an appraisal by Fresno Auction Co. indicating the liquidation value of the (FF&E) of these items at \$3,500. Therefore the \$430,000 value was reduced by \$3,500 to arrive at a purchase price of \$426,500.

A Phase I Environmental Site Assessment was conducted on June 7, 2007, with no significant findings. The CEQA Mitigated Negative Declaration adopted by Council on June 26, 2007 for the City's acquisition of the FUSD Site was amended to incorporate the subject 0.29-acre parcel into the proposed overall mixed-use development project. The addition of the 0.29-acre parcel into the proposed project, the acquisition of, and any subsequent demolition of the existing improvements would not result in any significant adverse effect on the environment.

The subject property is currently occupied by three businesses: a restaurant/bar (Las Palomas), a grocery / liquor store (C-Town Store), and a billboard (Vista Advertising). The property owner is operator of the restaurant / bar, and thus the purchase agreement includes the personal property and business value for this business described above. Agency staff is working with the two tenants on their respective relocation assistance and has estimated these combined costs at \$100,000-\$125,000.

Following acquisition, the improvements will be razed and the site cleared. The estimated costs of demolition and subsequent clearing of the site is \$30,000 to \$50,000. In addition, the Agency would incur nominal typical closing costs such as legal / title / escrow costs [\$3,000-

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\$5,000]. Funding for all of these costs is identified in the Agency's FY 2007-2008 budget.

The proposed new development is consistent with the redevelopment plan goals and objectives of the Southeast Fresno Redevelopment Project Area. It will significantly improve several dilapidated and partially vacant parcels situated along a high visible and traveled corridor into and out of downtown Fresno, creates new jobs, and improve property values within the surrounding neighborhoods.

Thus the Agency is seeking the Board's approval to enter in the Purchase and Sales Agreement for the acquisition of the property at this time.

At the regularly scheduled meeting of the Housing and Community Development Commission on August 22, 2007, the Commission recommended approval of the Purchase and Sales Agreement.

Attachments: Exhibit "A" Location / Aerial Map
 Exhibit "B" Purchase and Sales Agreement

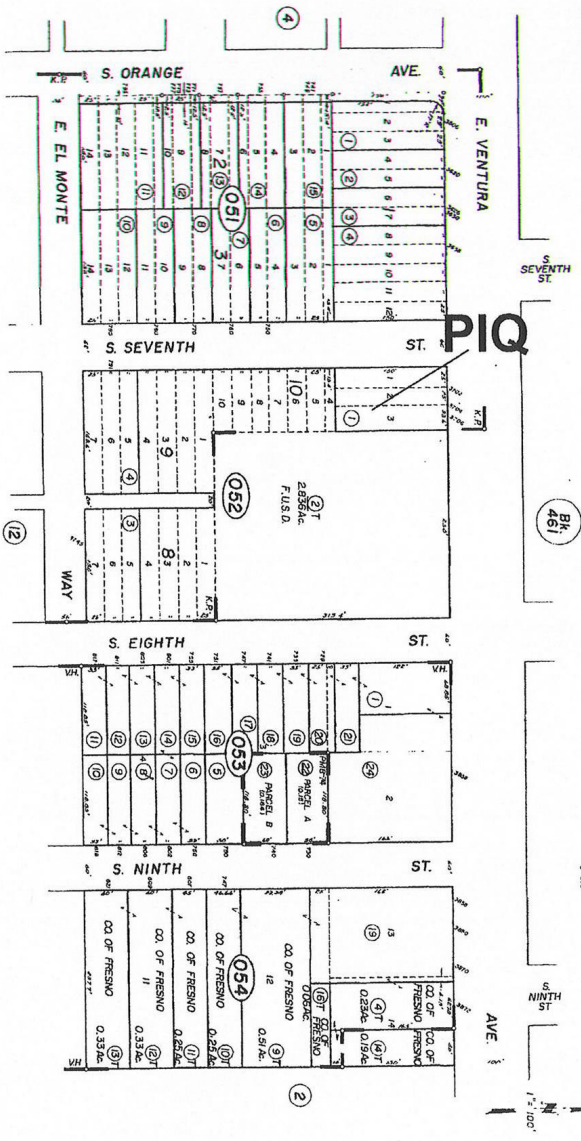
NOTE —
This map is for assessment purposes only.
It is not to be used for any other purpose
except as evidence of land for purposes
of taxing or subdivision law.

SUBDIVIDED LAND & POR. SEC. 11, T. 14 S., R. 20 E., M. D. B. & M.

Trg. Area
5-481
5-482
5-483

470-05

EXHIBIT "A"



Parcel Map No. 72-74 - Bk. 8, Pg. 74
Kenmore Park - R.S. Bk. 7, Pg. 4
Ventura Heights - R.S. Bk. 3, Pg. 3

NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

Assessor's Map Bk. 470 - Pg. 05
County of Fresno, Calif.



**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE REDEVELOPMENT AGENCY, a public body, corporate and politic ("Buyer"), and CUBERTO HERNANDEZ AND IMELDA HERNANDEZ, husband and wife as joint tenants ("Seller"), enter this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The Agency is responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Southeast Fresno Redevelopment Revitalization Area (the "Project Area"), in accordance with the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et. seq.*; hereafter the "CRL"). The Plan and the CRL authorize the Agency to purchase property for redevelopment purposes.
- B. The Seller owns certain Real Property within the Project Area, and the City of Fresno, commonly known as 3702 E Ventura Avenue, Fresno, California 93702, and more particularly described in Exhibit A, attached, (the "Property"); together with a restaurant/bar and related improvements. The restaurant/bar is equipped with furniture, fixtures, and equipment (collectively, "FF&E"), and an assortment of operating supplies consisting of food and beverage inventories, and similar consumable items ("Inventory").
- C. The owned FF&E, the inventory, and the other tangible personal property are collectively called the "Personal Property." Seller also holds a liquor license Type 47 from the State of California, and also holds a business license and a dance permit from the City of Fresno ("Contract Rights)." Under the State of California ALCOHOLIC BEVERAGE CONTROL ACT Public Entities, such as the Buyer are prohibited from possessing a liquor license. Therefore, the seller will permanently surrender the aforementioned liquor license.
- D. Seller shall retain certain personal property as described in Exhibit "C".
- E. To further redevelopment in the Project Area, the Buyer wants to purchase the Property on the terms and conditions set forth in this Agreement.

AGREEMENT

- 1 **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement.
- 2 **Conditions Precedent.** Escrow Closing and Buyer's obligation to purchase the Property are subject to the satisfaction of the following conditions precedent. The conditions are solely for Buyer's benefit unless otherwise indicated. Each condition must be satisfied or Buyer must waive it in writing within the time provided. If no time is stated, then the condition must be satisfied within a reasonable time. If any condition is not timely satisfied, the Buyer may waive the condition and close escrow, or it may terminate this Agreement by giving the Seller and Title Company 10 days' written notice. After expiration of the 10 days, this Agreement, and any escrow will terminate. The Title Company will return any documents and money deposited into escrow to the depositor, after deducting any escrow cancellation fee, and Buyer will have no further obligation to Seller.
 - 2.1 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense, (b) the tests and investigations do not unreasonably interfere with Seller's possession, (c) Buyer indemnifies and holds Seller harmless from any costs or liability resulting from the tests or investigations and, if the escrow is canceled for a reason that is not the fault of Seller, for any damage to the Property resulting from Buyer's tests and investigations.
 - 2.2 **Compliance with CEQA.** The Buyer shall have complied with the California Environmental Quality Act, as applicable.
- 3 **Purchase Price.** The purchase price for the Property is FOUR HUNDRED TWENTY- SIX THOUSAND FIVE HUNDRED 00/100 DOLLARS (\$426,500.⁰⁰). Buyer will pay the purchase price by depositing a check into the escrow in time to meet the Title Company's requirements regarding immediately available funds for Closing.
- 4 **Eminent domain.** Seller acknowledges that under the Plan, Buyer has the power, subject to legal requirements, to acquire the Property by eminent domain. Buyer and Sellers stipulate that the purchase price payable to Seller includes all compensation to which Seller would be entitled under Chapter 9 of the California Eminent Domain Law (Code of Civil Procedure Sections 1263.010, and following) or otherwise, connected with or arising out of the following: (a) Buyer's acquisition of the Property, and (b) any pre-condemnation or pre-acquisition activities of Buyer (and any officer, agent, contractor, or employee of Buyer).

"Compensation" as used in the preceding sentence includes, without limitation, any claims that Sellers may have for the following: all improvements, crops, fair market value of the Property, injury to remainder property, loss of goodwill, inverse condemnation, interference with or interruption of business, loss of rents in connection with relocation activities, and any other claims, losses, or damages. Buyer may file this Agreement with the Court as a stipulation upon which the Court may enter judgment in any eminent domain proceeding for the Property. Seller waives all defenses and the right to seek any additional compensation in any eminent domain proceeding for the Property. This stipulation will survive the Closing and any expiration or termination of this Agreement.

- 5 **Seller's Warranties.** Seller represents and warrants that: (a) Seller own the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, encroachments from the Property onto adjacent properties, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property, (c) Sellers have no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the Property; (d) Seller has no knowledge of any hazardous materials or substances stored, discharged, or otherwise present in, on, or affecting the Property, (e) Seller has no knowledge of any material defects in the Property, and (f) the Property is free of occupancies excepting only those stated in Section 6 hereof. These warranties shall survive the Closing and the recording of the grant deed.
- 6 **Property Occupancies.** Seller represents and warrants that the Seller currently occupies approximately 620sf for a restaurant and 2,160sf for a bar. Seller leases to C-Town Store approximately 973sf for a corner grocery store, and Seller leases a portion of the site to Vista Advertising for a single sign billboard on wood structure. Seller shall not rent, re-rent, or otherwise permit any unit on the Property to be re-occupied, after the Seller execute this Agreement until the earlier to occur of the following: (a) Closing, (b) failure of the Agency Board to approve this Agreement, or (c) or other termination of this Agreement. Buyer shall comply with any applicable relocation laws.
- 7 **Opening Escrow.** The parties will open an escrow with Fidelity National Title Company at 1680 W. Shaw Avenue, Fresno, California 93711 ("Title Company"), Attention: Bernadette Watson.
 - 7.1 **Agreement as Joint Escrow Instructions.** This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.
 - 7.2 **Deposits into Escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement

identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within five days after the Agency Board approves this Agreement, Seller will deposit a recordable grant deed, substantially in the form attached as Exhibit "B," into the escrow with Title Company, or will conditionally deliver it to Buyer.

- 7.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller, subject only to title exceptions numbered 3, 6, 7, 8, in the preliminary title report, Order No. 06-131564-C-DM, issued by the Title Company, effective as of August 9, 2007 at 7:30am.
- 7.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section above. Buyer will pay the costs of a CLTA owner's title policy insuring Buyer's title in the condition described in Section 7.3, escrow fees, and costs to record the grant deed. Buyer and Sellers will pay any other costs according to the custom in Fresno County.
- 7.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close when any conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. The escrow will continue in effect until Closing unless Buyer or Seller gives a 30-day written demand to terminate the escrow. If Seller demands that escrow terminate, then Buyer, within the 30 days, may either (a) deposit the purchase price into escrow, and Title Company will Close escrow, or, (b) it may agree to the demand, and the Title Company will terminate the escrow and return all funds or all documents, less any termination fee, and this Agreement will be of no further effect except as herein provided.
- 7.6 **Disbursements.** At Closing, Title Company may disburse the purchase price, less Seller's costs to clear title, prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 7.3, above, for the purchase price or such lesser amount as Buyer may designate.
- 7.7 **Prorations.** At Closing, the Title Company will prorate the following, between Seller and Buyer, based on a 30-day month: real property taxes, special assessments, and rents, if any.
- 7.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.

- 7.9 **Broker.** Each party represents and warrants that it has not engaged a broker or real estate agent for this transaction, and no commissions are payable concerning this purchase and sale.
- 8 **Delivery of Possession.** Seller shall deliver possessions at Closing, subject to Buyer's responsibilities under applicable law to relocate any occupants.
- 9 **Miscellaneous Provisions.**
- 9.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
- 9.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and duly given on the date of service, if (a) served personally on the person to receive the notice, (b) delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, or (c) by facsimile that provides a transmission confirmation showing the date and time transmitted.

To Sellers:

Cuberto Hernandez
Imelda Hernandez
4169 Saginaw
Fresno, CA 9373722

Fax No.: (559) 277-9605

To Buyer:

Redevelopment Agency of the City of Fresno
Attention: Executive Director
2344 Tulare Street, Suite 200
Fresno, CA 93721

Fax No.: (559) 498-1870

- 9.3 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written

or oral.

- 9.4 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 9.5 **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder.
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.7 **Attorneys' Fees.** If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 9.8 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.
- 9.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.10 **Waiver.** If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.
- 9.13 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this

Agreement will control and take precedence over the Exhibit or Attachment.

- 9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.
- 9.15 **Survival.** All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.
- 10 **Environmental Indemnity.** Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before Closing. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the Agency by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates and in the year set forth below.

BUYER:
REDEVELOPMENT AGENCY OF
THE CITY OF FRESNO

SELLER:

MARLENE MURPHEY
Executive Director


Cuberto Hernandez

Dated: _____, 2007

Dated: 08/17/07, 2007

Imelda Hernandez 

Dated: 8-17-07, 2007

The Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted by the Redevelopment Agency Board on _____.

ATTEST:
REBECCA E. KLISCH
Ex-officio Clerk

APPROVED AS TO FORM:
JAMES C. SANCHEZ
Ex-officio Attorney

By _____
Deputy

By _____
Deputy/Sr. Deputy/Assistant

Dated: _____, 2007

Dated: _____, 2007

Attachments:

Exhibit A: Legal Description
Exhibit B: Grant Deed
Exhibit C: List of Furniture and Equipment

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

APN 470-052-01

Lots 1, 2 and 3 in Block 10 of Kenmoore Park, in the City of Fresno, County of Fresno, State of California, as shown on map filed Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of said County.

EXHIBIT "A"

Recording Requested By:
Redevelopment Agency of the
City of Fresno
No Fee-Government Code Sections
6103 and 27383

When Recorded Mail to:
Redevelopment Agency of Fresno
2344 Tulare Street, 2nd Floor
Fresno, CA 93721

APN: 470-052-01

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CUBERTO HERNANDEZ AND IMELDA HERNANDEZ, a husband and wife, GRANTOR, hereby GRANTS to the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic, all that real property situated in the County of Fresno, State of California, described as follows:

APN 470-052-01

Lot 1, 2, and 3 in Block 10 of Kenmoore Park, in the City of Fresno County of Fresno State of California, shown on map filed Book 7, Page 4 of Record of Surveys, in the office of the County Recorder of Said County.

CUBERTO HERNANDEZ

IMELDA HERNANDEZ

Date: _____, 2007

Date: _____, 2007

EXHIBIT "B"

LIST OF FURNITURE AND EQUIPMENT

1. (1) Sound system –
Numack Mixer, 4 large JVC MTC speakers
2. (20) Swivel Top Bar Stools
3. (12) Tall Back Chairs
4. (1) Electric Register
5. (1) Rowe AMI CD Juke Box
6. (1) 2 Door Reach-in Cool Box

EXHIBIT "C"